



Summary of Bills of Interest 2021 Regular Session

Prepared for the Senate Republican Caucus – May 2021

TABLE OF CONTENTS

Senate Bill 5, Relating to claims arising out of WV Consumer Credit and Protection Act	3
Senate Bill 9, Continuing Licensed Racetrack Modernization Fund.....	4
Senate Bill 10, Modifying racetrack licensing due date.....	5
Senate Bill 11, Declaring work stoppage or strike by public employees to be unlawful	6
Senate Bill 12, Relating to local health department accountability.....	7
Senate Bill 14, Providing for additional options for alternative certification for teachers.....	9
Senate Bill 270, Providing for collection of tax by hotel marketplace facilitators	10
Senate Bill 272, Relating to WV Employment Law Worker Classification Act.....	11
Senate Bill 275, Relating generally to WV Appellate Reorganization Act of 2021.....	12
Senate Bill 277, Creating COVID-19 Jobs Protection Act.....	14
Senate Bill 295, Relating generally to economic development loans and loan insurance issued by state	15
Senate Bill 334, Establishing license application process for needle exchange programs.....	17
Senate Bill 368, Authorizing DEP to develop Reclamation of Abandoned and Dilapidated Properties Program.....	20
Senate Bill 439, Allowing use or nonuse of safety belt as admissible evidence in civil actions	22
Senate Bill 458, Relating to possession of firearms by individuals during state of emergency.....	23
Senate Bill 472, Updating criteria for regulating certain occupations and professions	24
Senate Bill 658, Requiring sheriff's departments to participate and utilize Handle With Care Program for trauma-inflicted children.....	26
Senate Joint Resolution 4, Incorporation of Churches or Religious Denominations Amendment	27
House Bill 2001, Relating generally to creating the West Virginia Jumpstart Savings Program.....	28
House Bill 2002, Relating to Broadband	29
House Bill 2005, Relating to health care costs	32
House Bill 2006, Relating to the West Virginia Contractor Licensing Act.....	33
House Bill 2008, Amending requirements for licensure relating to elevator mechanics, crane operators, HVAC, electricians, and plumbers	34
House Bill 2009, Relating to limitations on the use of wages and agency shop fees by employers and labor organizations for political activities	36
House Bill 2012, Relating to public charter schools.....	38
House Bill 2013, Relating to the Hope Scholarship Program.....	40
House Bill 2014, Relating to role of the Legislature in appropriating federal funds	42
House Bill 2019, Elevating Economic Development and Tourism Departments	44

House Bill 2024, Expand use of telemedicine to all medical personnel	45
House Bill 2025, Provide liquor, wine, and beer licensees with some new concepts developed during the State of Emergency utilizing new technology to provide greater freedom to operate in a safe and responsible manner	47
House Bill 2026, Relating to the modernization of the collection of income taxes by adopting uniform provisions relating to the mobile workforce	49
House Bill 2363, Relating to “Best Interests of the Child Protection Act of 2021”	51
House Bill 2499, Tax reduction for arms and ammo manufacturing	52
House Bill 2581, Providing for the valuation of natural resources property and an alternate method of appeal of proposed valuation of natural resources property.....	54
House Bill 2694, Create the 2nd Amendment Preservation Act	55
House Bill 2895, Supplementing and amending the appropriations of public moneys to the Department of Veterans’ Assistance	56
House Bill 2982, Relating to the Second Chances at Life Act of 2021.....	57
House Bill 3293, Relating to single-sex participation in interscholastic athletic events	59
House Joint Resolution 2, Providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate	60
House Joint Resolution 3, Property Tax Modernization Amendment.....	61

Senate Bill 5, Relating to claims arising out of WV Consumer Credit and Protection Act

Talking Points

- Reforms to the WV Consumer Credit and Protection Act in order to reduce frivolous lawsuits and encourage more reasonable and efficient settlements of legal claims.
- Expands the “right to cure” to all claims brought under the Consumer Credit and Protection Act.
- Creates an offer of judgement statute, which provides that if a defendant in a civil action makes an offer of settlement which is rejected by the plaintiff, the defendant shall be entitled to recover reasonable attorney's fees and expenses incurred by the defendant if the final judgment is one of no liability or less than 75 percent of such offer of settlement.

Summary

This bill creates an offer of settlement/judgment mechanism under the Consumer and Credit Protection Act (CCPA). Either party may send an offer to the other at any time between 30 days after service of a complaint and 30 days before trial. The offer can be amended up to two times. If a plaintiff rejects an offer made by the defendant, and judgment is entered in favor of the defendant or the plaintiff's recovery is less than 75 percent of the defendant's offer, the plaintiff would not be entitled to recover attorney fees. If the final judgment does not exceed 75 percent of a defendant's offer, the defendant could petition the court for attorney fees and expenses, if the court finds that the plaintiff acted in bad faith in rejecting the offer.

This bill codifies the “lode star” criteria as guidelines for a court in determining the reasonableness of attorney fees and expenses to be awarded in CCPA claims and states that the court may disallow an award of attorney's fees related to an offer to settle or allow judgment if it determines that the offer was not made in good faith.

This bill allows a court to award attorney's fees to either party if, upon motion, the court finds that a claim or defense is frivolous.

This bill also unifies the process for pre-suit submission of a notice of violation and offer to cure for all CCPA claims (previously separate) and provides that cure offers are not admissible at trial, except for post-judgment proceedings before the court to determine attorney's fees, if any.

Effective Date: June 16, 2021

Senate Bill 9, Continuing Licensed Racetrack Modernization Fund

Talking Points

- Continues the Licensed Racetrack Modernization Fund, which is used by racetracks for facility modernization improvements.
- Up to \$9 million of lottery revenue is distributed to the fund annually and made available to the program.

Summary

This bill extends the deposit of certain racetrack video lottery proceeds into the accounts of the Licensed Racetrack Modernization Fund (“the Fund”) created within the State Lottery Fund. For all fiscal years beginning on or after July 1, 2011, and ending with the fiscal year beginning July 1, 2020, the State Lottery Commission has been required to deposit, in the discretion of the Commission, up to \$9 million from such amounts the Commission determines is available from its administrative allocation (up to 4 percent of the racetrack video lottery gross terminal income) “into a separate facility modernization account maintained within the Licensed Racetrack Modernization Fund for each racetrack.” The bill would extend this requirement to July 1, 2030.

Effective Date: June 22, 2021

Senate Bill 10, Modifying racetrack licensing due date

Talking Points

- Extends the due date of the Racetrack Table Game renewal license fee from July 1 to October 1.
- Provides relief to the racetracks, which were impacted greatly by the COVID pandemic.

Summary

This bill modifies the due date for renewals of licenses to operate a racetrack with lottery games. Previous law provided that all licenses expire on June 30 of each year. This bill moved that date to September 30. The rationale behind the move is to modify the code to reflect changes that were made by Executive Order issued during the beginning of the pandemic that pushed the expiration date to September 30. The result would allow the casinos to fully realize the value of their license since they were closed for several months at the outset of the pandemic.

Effective Date: June 21, 2021

Senate Bill 11, Declaring work stoppage or strike by public employees to be unlawful

Talking Points

- Codifies the long-established common law that public employees have no right to strike.
- Prohibits the State Board from granting a waiver to a county board for its noncompliance with the 200-day minimum employment term or the 180-day minimum instructional term requirements if the noncompliance is the result of a concerted work stoppage or strike.
- Requires a county board to withhold the pay of employees for each day a school is closed because of a concerted work stoppage or strike, but requires payment to the employees who subsequently fulfill their duties for the instructional term and the employment term as per their employment contract.

Summary

This bill puts into code a 1990 ruling by the West Virginia Supreme Court of Appeals that *“public employees have no right to strike in the absence of express legislation or, at the very least, appropriate statutory provisions for collective bargaining, mediation, and arbitration.”* It sets forth when a county board of education employee is considered to be participating in a work stoppage or strike. It prohibits accrued and equivalent instructional time and the delivery of instruction through alternative methods from being used to cancel days lost because of a concerted work stoppage and strike. It prohibits the State Board from granting a waiver to a county board for its noncompliance with the 200-day minimum employment term or the 180-day minimum instructional term requirements if the noncompliance is the result of a concerted work stoppage or strike. It provides that if an employee remains employed by the county board notwithstanding his or her participation in a concerted work stoppage or strike, which the Legislature determines to be grounds for termination, the county board is required to withhold the prorated salary or hourly pay for each day the employee participates and requires the sums to be forfeited to the county board.

Effective Date: June 2, 2021

Senate Bill 12, Relating to local health department accountability

Talking Points

- Provides accountability to local health departments and requires approval of their rules by elected members of a county commission.
- Permits an appointing authority to remove a member of the local board of health.
- Provides all rules shall be approved, disapproved, or amended and approved by the county commission or appointing entity within 30 days of approval from the local health department.

Summary

The bill creates a definition of appointing authority that includes the county commission or municipality or combination thereof that authorized the creation of the local board of health.

The bill permits a member of the appointing authority to remove a member of the local board of health. The reasons permitted for removal are listed and include official misconduct, incompetence, neglect of duty, or the revocation of any state professional license or certification. Gross immorality was removed as a basis for removal. Language was added to address a combined board. This section states with respect to a combined board, a county commission or appointing authority may remove any of its appointed members pursuant to the provisions of its lawfully adopted bylaws and shall remove any of its appointed members for official misconduct, incompetence, neglect of duty, or the revocation of any state professional license or certification.

Existing language permitted a local board of health to adopt, promulgate, and amend rules and file the rules with the clerk of the county commission. The bill adds language to require the commissioner to establish a procedure by which adverse determination by local health departments may be appealed, unless otherwise provides for, for the purpose of ensuring a consistent interpretation of state public health laws and rules of the Department of Health and Human Resources.

The bill provides that when rule is adopted, promulgated, or amended, the local board of health shall place a notice in the State Register and on their organization's web page, setting forth a notice of proposed action, including the text of the new rule or amendment, and the date, time, and place for receipt of public comment.

The bill provides all rules shall be approved, disapproved, or amended and approved by the county commission or appointing entity within 30 days of approval from the local health department.

All rules of a combined local board of health shall be approved, disapproved, or amended and approved by each appointing entity within 30 days of approval from the combined local board of health. If one appointing entity approves and another does not approve a rule from a combined local board health department, the rule is only in effect in the jurisdiction of the appointing entity which approved the rule.

An approved rule shall be filed with the clerk of the county commission or the clerk or the recorder of the municipality or both and shall be kept by the clerk or recording officer in a separate book as public records.

The bill provides a rule currently in effect is not subject to approval, unless amended, from the county commission or appointing authority.

The bill provides if there is an imminent public health emergency, approval of the county commission or appointing authority is not necessary before the rule goes into effect, but shall be approved or disapproved by the county commission or appointing authority within 30 days after the rules are effective.

The bill provides that if the Governor declares a statewide public health emergency, the state health officer may develop emergency policies and guidelines that each of the local health departments responding to the emergency must comply with in response to the public health emergency.

Effective Date: June 2, 2021

Senate Bill 14, Providing for additional options for alternative certification for teachers

Talking Points

- Provides for a simpler procedure for obtaining a teaching certificate through alternative certification.
- Creates a third set of conditions for which a person may be issued a professional teaching certificate with the intent of providing additional options for alternative certification.
- Requires that teaching certificates granted pursuant to the new set of conditions be equivalent to certificates granted to graduates of teacher preparation programs at higher education institutions.
- This simplified procedure will result in more certified teachers in classrooms.

Summary

The bill creates a third set of conditions for which a person may be issued a professional teaching certificate with the intent of providing additional options for alternative certification. This third set of conditions includes that the person:

- Holds a bachelor's degree from an accredited institution of higher education;
- Submits to a criminal history check;
- Successfully completes pedagogical training or a pedagogical course or courses in substantive alignment with nationally recognized pedagogical standards; or approved or established by the state board; and,
- Passes the same subject matter and competency test or tests required by the state board for traditional program applicants for licensure.

The bill also requires that teaching certificates granted pursuant to the new set of conditions be equivalent to certificates granted to graduates of teacher preparation programs at higher education institutions.

Effective Date: May 27, 2021

Senate Bill 270, Providing for collection of tax by hotel marketplace facilitators

Talking Points

- Requires certain marketplace facilitators, such as Airbnb and VRBO, to collect and pay the required hotel occupancy tax on behalf of the hotels and hotel operators for which they book sales.
- Only applies to marketplace facilitators who have an economic nexus to the state.
- This bill was vetoed in 2020, but it was signed by the Governor this year after certain administrative issues in the bill were addressed.

Summary

The bill requires certain marketplace facilitators, such as Airbnb and VRBO, to collect and pay the required hotel occupancy tax on behalf of the hotels and hotel operators for which they book sales. The bill makes the marketplace facilitator responsible for remitting the hotel occupancy tax to the taxing authority, which is either the county commission or the municipality in whose jurisdiction the hotel is located. Payment is made directly from the marketplace provider to the taxing authority.

The bill only applies to marketplace facilitators who have an economic nexus to the state. That nexus is defined as West Virginia sales of \$100,000 or more in a calendar year or West Virginia sales in 200 or more separate transactions. That nexus standard is the same standard adopted by the Tax Division regarding collection of sales tax from remote vendors. The ability to collect sales tax from remote vendors, or, in this case, marketplace facilitators, stems from the United States Supreme Court case of South Dakota v. Wayfair, Inc., 585 U.S. (2018), which held that states may charge tax on purchases from out-of-state vendors that do not have a physical presence in the state, but that do have an economic presence there. The nexus standard that the Supreme Court found sufficient in Wayfair is the same standard used in SB 270 and by the state Tax Division.

A substantively similar bill, SB 163, completed legislative action in the 2020 Regular Session, but was vetoed by the Governor. The bill addresses the concerns raised in the veto message, in particular the absence of the economic nexus standard in the 2020 bill.

Effective Date: June 7, 2021

Senate Bill 272, Relating to WV Employment Law Worker Classification Act

Talking Points

- Creates a statutory test for a worker to be classified as an “independent contractor” (as opposed to an employee) for the purposes of workers’ compensation, unemployment compensation, the Human Rights Act, and wage payment and collection, each of which previously had different standards.
- This standardized legal framework will provide a benefit to employers, employees, and independent contractors by providing clear standards and predictability.

Summary

The bill creates a consistent standard for classifying workers as independent contractors under state workers’ compensation and unemployment compensation laws, as well as the Wage Payment and Collection Act and West Virginia Human Rights Act. Previously, each had different standards.

Workers will be presumed to be employees unless they meet each element of a four-part test:

- The worker signs a written contract with the principal acknowledging certain conditions related to their services;
- The worker has filed or is required to file an income tax return for a business or self-employed entity for the fees earned from the work;
- The worker actually and directly controls the manner and means by which the work is performed (except the final result of the work, orientation or safety measures required by the principal, or other obligations under law); and,
- The worker satisfies at least three criteria from a list relating to the workers’ ability to control their finances and behavior.

Even if a worker meets the four-part test, a principal is not required to classify the workers as an independent contractor. Workers who do not meet the four-part test may still be classified as an independent contractor if they meet the IRS 20-factor test. Direct sellers as defined by the IRS are also considered independent contractors.

Effective Date: June 9, 2021

Senate Bill 275, Relating generally to WV Appellate Reorganization Act of 2021

Talking Points

- Establishes the West Virginia Intermediate Court of Appeals, to be operable by July 1, 2022.
- The Intermediate Court will consist of one division made up of three judges. The initial three judges will be appointed by the Governor with the advice and consent of the Senate, but subsequently will be elected.
- Also eliminates the Workers' Compensation Office of Administrative Judges and transfers the duties of the Office of Judges to the Workers' Compensation Board of Review.
- West Virginia had previously been the largest state without an intermediate appellate court. The establishment of this court will provide for a greater body of law in the state and more predictability for litigants, both of which make the state more attractive for economic development.

Summary

The bill amends 24 sections and creates 29 new sections of Code, establishing the West Virginia Intermediate Court of Appeals ("ICA"); eliminating the Workers' Compensation Office of Administrative Judges ("Office of Judges"); transferring the powers and duties of the Office of Judges to the Workers' Compensation Board of Review ("Board of Review"); and making other related changes.

The bill creates and amends several sections in the Election Code, W.Va. Code §3-1-1 et seq., to provide general procedures for the election of judges to the ICA. These sections provide for election timing and frequency; nonpartisan election by division; ballots; certificates of announcement of candidacy; and filling vacancies.

The bill amends one section in Chapter 6 (General Provisions Respecting Officers) to provide a start date for terms of office of ICA judges.

The bill creates one new section in Chapter 16 (Public Health) providing for transfer of appellate jurisdiction over final decisions issued by the West Virginia Health Care Authority in certificate of need reviews from the Office of Judges to the ICA; and sets forth effective dates as well as transition procedures.

The bill creates and amends several sections within the Workers' Compensation Act, W.Va. Code §23-1-1 et seq., to provide for termination of the Office of Judges; transfer of its powers and duties to the Board of Review; transfer of appellate jurisdiction over decisions of the Office of Judges and Board of Review in workers compensation matters; effective dates; and procedures to effectuate the transition.

The bill amends two sections in the State Administrative Procedures Act, W.Va. Code §29A-1-1 et seq., to provide for effective dates for the ICA to assume jurisdiction over contested cases as well as procedures to effectuate the transition; provide that circuit courts lack jurisdiction to review contested cases after a date certain; and authorize review of decisions of the ICA under Chapter 29A by the Supreme Court.

The bill creates a new article within Chapter 51 (Courts and their Officers) establishing the ICA. The article provides a short title, definitions, and legislative findings; creates the ICA as a three-judge court of record; provides qualifications for the office of ICA judge and limitations on their activities; provides for the Clerk of the Supreme Court of Appeals of West Virginia ("Supreme Court") to act as Clerk of the ICA;

provides that the ICA has no original jurisdiction; establishes the court's appellate jurisdiction over certain matters as well as certain matters over which the ICA is expressly without jurisdiction; provides for discretionary jurisdiction of the Supreme Court over any civil case filed in the ICA; provides for appellate jurisdiction of the ICA over judgments or final orders in criminal matters if the Supreme Court adopts a policy of discretionary review of criminal appeals; sets forth extraordinary circumstances under which the Supreme Court may grant a motion for direct review of a case on appeal to the ICA, and the procedures therefor; provides for initial appointment of the three ICA judges by the Governor from recommended candidates submitted by the Judicial Vacancy Advisory Commission; provides for ICA appointees to begin their duties as judge on July 1, 2022; provides for 10-year terms for ICA judges following initial terms; provides for the filling of vacancies in the judge's offices and temporary assignments where a judge is temporarily unable to serve; provides for supervisory control by the Supreme Court over the ICA; provides that pleadings, practice, and procedure, including all filings, in all matters before the ICA will be governed by rules promulgated by the Supreme Court; requires appeals to the ICA to be filed with the Clerk of the Supreme Court; authorizes filing and appeal bonds for filing appeals to the ICA; provides for discretion by the ICA whether to require oral argument; authorizes the Chief Justice of the Supreme Court to exercise supervisory control over the ICA; requires the administrative director of the Supreme Court to provide necessary facilities, furniture, fixtures, and equipment necessary for the ICA, and to make existing courtrooms available for its use; authorizes the administrative director to contract with other facilities to provide space suitable for the ICA; requires the administrative director to provide administrative support and authorizes employment of additional staff, as necessary; provides for selection of a Chief Judge of the ICA under rules to be established by the Supreme Court; requires a written decision on the merits "as a matter of right in each appeal that is properly filed and within the jurisdiction of the" ICA, and the court's opinions, orders and decisions are binding precedent "unless the opinion, order, or decision is overruled or modified by the Supreme Court of Appeals"; provides that while appeals from orders or judgments of the ICA may be made to the Supreme Court, the Supreme Court has discretion to grant or deny any such appeal, and discretion to stay such order or judgment; provides for annual compensation of an ICA judge of \$142,500; requires the Attorney General to appear as counsel for the State in all cases pending in the ICA to the same extent required by law in cases pending in the Supreme Court; and provides a severability clause for the new article.

The bill creates another new section in Chapter 51 providing for appeals of family court decisions to the ICA after a date certain and deprive circuit courts of jurisdiction over such matters within the jurisdiction of the ICA after a date certain; and amends another section in the same chapter providing for inclusion of ICA judges in the judicial retirement system.

Lastly, the bill amends one section in Chapter 58 (Appeal and Error) to provide for appeals of circuit court decisions after a date certain to the ICA and authorizes the filing of petitions to appeal ICA decisions to the Supreme Court.

Effective Date: June 30, 2021

Senate Bill 277, Creating COVID-19 Jobs Protection Act

Talking Points

- Prohibits civil actions for the recovery of damages in any cause of action arising from COVID-19, with the exception of claims against any person who engaged in intentional conduct with actual malice.
- The prohibition applies both prospectively and retroactively to January 1, 2020.
- This bill provides citizens and employers protection from frivolous lawsuits arising out of the COVID-19 pandemic.

Summary

This bill prohibits the institution of civil actions for any loss, damages, personal injury, or death arising from COVID-19 against any individual or entity, including health care providers, institutions of higher education, businesses, manufacturers, and volunteers. “Arising from COVID-19” includes, but is not limited to:

- Implementing policies and procedures designed to prevent or minimize the spread of COVID-19;
- Testing;
- Monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating COVID-19 exposure or other COVID-19 related information;
- Using, designing, manufacturing, providing, donating, or servicing precautionary, diagnostic, collection, or other health equipment or supplies, such as personal protective equipment;
- Closing or partially closing to prevent or minimize the spread of COVID-19;
- Delaying or modifying the schedule or performance of any medical procedure;
- Providing services or products in response to government appeal or repurposing operations to address an urgent need for personal protective equipment, sanitation products, or other products necessary to protect the public;
- Providing services or products as an essential business, health care facility, health care provider, first responder, or institution of higher education; or
- Actions taken in response to federal, state, or local orders, recommendations, or guidelines lawfully set forth in response to COVID-19.

This bill expressly does not preclude an employee from filing a claim for workers’ compensation benefits. It also does not preclude certain types of product liability claims or claims against any person who engaged in intentional conduct with actual malice.

Effective Date: March 11, 2021; retroactive to January 1, 2020

Senate Bill 295, Relating generally to economic development loans and loan insurance issued by state

Talking Points

- Enhances the capabilities of the current Broadband Loan Insurance Program to assist internet service providers to take advantage of the FCC's Rural Digital Opportunity Fund (RDOF) program.
- This is a codification of an executive order that the Governor issued over the summer at the request of Legislative Leaders.
- Also implements reporting requirements to ensure transparency and accountability.

Summary

This bill revises the provisions of code concerning loans for economic development made by the Board of Treasury Investments (BTI) to the Economic Development Authority (EDA). The primary purpose of the bill is to establish the Broadband Loan Insurance Program (Program), which would allow the EDA to insure repayment of loans made by third-party financial institutions to eligible broadband providers.

The bill eliminates obsolete language regarding BTI loans to West Virginia Advancement Corporation and West Virginia Enterprise Capital Fund, LLC, which were wholly affiliated subsidiaries of the EDA. It amends existing code to require EDA to provide BTI the opportunity to inspect and copy any records related to BTI loans to EDA or EDA loans to third parties funded by a BTI loan to EDA.

The Broadband Loan Insurance Program established in the bill authorizes BTI to loan up to \$80 million to EDA for the express purpose of insuring loans to eligible broadband providers made by third-party financial institutions. The program limits to \$20 million the amount EDA may insure for a single broadband provider in a single calendar year, and it also limits the term of any insurance it provides to 20 years. If a broadband provider defaults on a loan insured through the Program, BTI transfers loan moneys to EDA, who then remedies the default.

The Program is limited to insuring loans made by financial institutions to broadband providers for the capital costs of providing broadband service to unserved or underserved areas under federally funded broadband expansion programs. The financial institution must certify that it would not make the loan but for EDA insuring it. The broadband provider must provide detailed financial information when applying for a loan under the Program and must publish a Class II legal advertisement advising the public that the application has been made and that EDA may approve the application within 10 days. If an objection is made that the project for which the loan is being made does not qualify for the program, the Broadband Enhancement Council must conduct a hearing within 30 days and issue a decision on the objection within 30 days after the hearing. Any appeal from that decision must be made within 30 days to the Circuit Court of Kanawha County.

Several requirements are established to ensure transparency and accountability. EDA must post information regarding all insurance agreements and the projects to which they relate on its website. EDA is also obligated to adopt appropriate accounting practices and internal controls. BTI may also on 30-days' notice copy and inspect any and all records of the Program. EDA must report quarterly, beginning on October 30, 2021, to the Joint Committee on Government and Finance, the Governor, and BTI specific

information about each project and provider insured. Beginning in 2022, EDA must also report annually to the Governor, BTI, and the Joint Committee on Government and Finance regarding the status of each project insured under the Program. Finally, beginning in 2022, the Legislative Auditor must biennially audit EDA's accounting practices and internal controls for compliance with the statutory requirements for the Program and report the findings to the Joint Committee on Government and Finance.

Effective Date: June 13, 2021

Senate Bill 334, Establishing license application process for needle exchange programs

Talking Points

- Creates a licensure program for a syringe services program.
- Requires a syringe services program be part of a harm reduction program which offers or refers an individual for services, including, but not limited to HIV, hepatitis, and sexually transmitted diseases screening; vaccinations; birth control; behavioral health; overdose prevention, syringe collection and sharps disposal; and, substance use treatment.
- A syringe services program shall ensure a syringe is unique to the program and distribute with a goal of a 1:1 model.
- Includes a procedure for revocation or limitation of the syringe services program and administrative due process.

Summary

The bill creates a licensure program for a syringe services program. The first section of the bill addresses definitions. Harm reduction means a program that provides services intended to lessen the adverse consequences of drug use and protect the public health and safety, by providing direct access to or a referral to syringe services program, substance use disorder treatment programs, screenings, vaccinations, education about overdose prevention, wound care, opioid antagonist distribution and education, and other medical services. A syringe services program is defined as a community-based program that provides access to sterile syringes, facilitates safe disposal of used syringes, and is part of a harm reduction program. A syringe is defined as both the needle and the syringe used to inject fluids into the body.

With respect to licensure, the bill provides that all new and existing programs shall obtain a licensure from the Office for Health Facility Licensure and Certification and sets forth the criteria for the application. This section includes general application information, including but not limited to the name of the applicant, a description of the services to be provided, contact person, hours of operation, description of the applicant's ability to encourage usage of medical care and mental health services as well as social welfare and health promotion, letters of support from a majority of the members of the county commission and a majority of the members of a governing body of the municipality in which it is proposing to locate, and the payment of a fee.

The bill sets forth program requirements. The bill states that to be approved for a license, a syringe services program shall be part of a harm reduction program which offers or refers an individual for services. The services include the following: HIV, hepatitis and sexually transmitted diseases screening; vaccinations, birth control and long-term birth control, behavioral health services, overdose prevention services, syringe collection and sharps disposal, educational services related to disease transmission, assist or refer an individual to substance use treatment program, refer to a health care practitioner or treat medical conditions; and include programmatic guidelines for sharps disposal, staff training, data collection and program evaluation and community relations.

The syringe services program shall offer services at every visit from a qualified health care provider, shall exclude minors from participation in the syringe exchange, but may provide minors with harm

reduction services, shall ensure a syringe is unique to the program, shall distribute with a goal of a 1:1 model, may substitute weighing the volume of syringes returned versus dispensed as specified: This substitution is only permissible if it can be done accurately and if the syringes are in a see-through container and a visual inspection of the container takes place prior to the syringes being weighed, the syringes are distributed directly to a recipient, and proof of West Virginia identification is required upon dispensing the needles.

The bill requires staff be trained on the requirements of the program, the services provided by the program, the applicant's policies and procedures concerning syringe exchange, disposing of infectious waste, procedures for obtaining or making referrals, opioid antagonist administration, cultural diversity and sensitivity to protected classes under state and federal law, completion of attendance logs for participation in mandatory training, maintain a program for the public to report syringe litter and shall endeavor to collect all syringe litter in the community.

The bill requires the syringe services program to have a syringe dispensing plan which includes: maintaining records of returned syringes by participants for two years, preventing syringe stick injuries, tracking the number of syringes dispensed, tracking the number of syringes collected, tracking the number of syringes collected as a result of community reports of syringe litter, eliminating direct handling of sharps waste, following a syringe stick protocol and plan, a budget for sharps waste disposal or an explanation if no cost is associated with sharps waste disposal, a plan to coordinate with the continuum of care.

The bill includes a procedure for revocation or limitation of the syringe services program and administrative due process. The bill provides for administrative appeals and judicial review. The bill has reporting requirements, a section for renewal, and provides for emergency rulemaking to occur by July 1, 2021.

There is a section for immunity. The bill provides that notwithstanding any provision of the code to the contrary, an employee, volunteer, or participant of a licensed syringe services program may not be arrested, charged with or prosecuted for possession of any of the following:

- 1) Sterile or used syringes, hypodermic syringes, injection supplies obtained from or returned to a program, or other safer drug use material obtained from a program established pursuant to this article, including testing supplies for illicit substances.

- 2) Residual amounts of a controlled substance contained in a used syringe, used injection supplies obtained from or returned to a program.

A law enforcement officer who, acting on good faith, arrests or charges a person who is thereafter determined to be entitled to immunity from prosecution under this section is not liable for the arrest or filing of charges. An individual who is wrongly detained, arrested, or prosecuted under this section shall have the public record associated with the detainment, arrest or prosecution expunged. A health care professional, or an employee or volunteer of a licensed syringe services program is not subject to sanction, detainment, arrest, or prosecution for carrying out the provisions of this article. A business that has syringe litter is immune from civil or criminal liability in any action relating to the needle on its property unless the business owner acted in reckless disregard for the safety of others.

The bill provides the Office of Health Facilities Licensure and Certification may assess an administrative penalty of not less than \$500 nor more than \$10,000 per violation of this article. The office may also seek injunctive relief. The bill provides that a syringe services program shall coordinate care with other health care providers.

If the syringe service program is closed, the program shall notify the participant of the closure of the service, prior to closure, in a conspicuous location, and provide an individual with a transition care plan.

The Bureau for Medical services shall submit a state plan amendment to permit harm reduction programs to be an eligible provider, except that the syringe exchange services shall not be eligible for reimbursement under the state plan.

The bill provides that upon passage, an existing provider not offering the full array of harm reduction services as set forth in this section shall cease and desist offering all needle exchange services. The bill provides that any provider offering the full array of harm reduction services shall have until January 1, 2022 to come into compliance. Any new provider shall have until January 1, 2022 to come into compliance.

Effective Date: July 9, 2021

Senate Bill 368, Authorizing DEP to develop Reclamation of Abandoned and Dilapidated Properties Program

Talking Points

- Modifies fees and processing of solid waste and allows the Department of Environmental Protection to create a new Reclamation of Abandoned and Dilapidated Properties Program.
- Shifts the solid waste assessment fee imposed upon the disposal of solid waste at any solid waste landfill disposal facility in this state and modify the distribution of the fee from a distribution based solely on a per capita basis to each county or regional solid waste authority to a two-tiered distribution.
- The Reclamation of Abandoned and Dilapidated Properties Program will work with political subdivisions to remediate abandoned and dilapidated structures in their communities.
- The new program will use a new special revenue fund, named the Reclamation of Abandoned and Dilapidated Properties Program Fund, which is funded from legislative appropriations, private funding for the program, and excess money from the Solid Waste Facility Closure Cost Assistance Fund.

Summary

The purpose of this bill is to modify fees and processing of solid waste. The bill would shift the solid waste assessment fee imposed upon the disposal of solid waste at any solid waste landfill disposal facility in this state and modify the distribution of the fee from a distribution based solely on a per capita basis to each county or regional solid waste authority to a two-tiered distribution:

- 25 percent of the additional fee shall be distributed equally to each county or regional solid waste authority; and
- 75 percent of the additional fee shall be distributed on a per capita basis to each county or regional solid waste authority based on the most recent population projections from the United States Census Bureau.

The funds are to be expended for the reasonable costs of administration of the county or regional solid waste authority including the necessary and reasonable expenses of its members, and any other expenses incurred from refuse cleanup, recycling programs, litter control programs, or any other locally important solid waste programs deemed necessary to fulfill its duties. The bill would also change the use by the West Virginia Department of Environmental Protection of the horizontal drilling waste assessment fee deposited into the Gas Field Highway Repair and Horizontal Drilling Waste Study Fund as follows: Under current law, those moneys are to be spent on improvement, etc. of public roads of 3 lanes located in the watershed from which the revenue was received. The bill would require instead that those funds be spent on improvement, etc. of public roads of 3 lanes located *in the county where the waste is generated through the Division of Highways county office in that county*.

The bill would also allow the West Virginia Department of Environmental Protection to create a new Reclamation of Abandoned and Dilapidated Properties Program and use a new special revenue fund to “work with county commissions or municipalities and implement redevelopment plans which will, at a minimum, establish prioritized inventories of structures eligible to participate in the program, offer reuse options for high-priority sites, and recommend actions county commissions or municipalities may take to

remediate abandoned and dilapidated structures in their communities.” The new special revenue fund, named the Reclamation of Abandoned and Dilapidated Properties Program Fund, would be funded from legislative appropriations, private funding for the program and excess money from the Solid Waste Facility Closure Cost Assistance Fund. Finally, the bill would increase an existing solid waste assessment fee imposed by W.Va. Code §22-16-4 upon the disposal of solid waste at any solid waste disposal facility in this state, a portion of the proceeds of which are deposited into the Solid Waste Facility Closure Cost Assistance Fund.

The bill would also exempt any “mixed waste processing and resource recovery facility as those facilities are defined in code or rule and which processes a minimum of 70 percent of the material brought to the facility on any given day on a 30-day aggregate basis” from certain fees and assessments, and from the jurisdiction of the West Virginia Public Service Commission.

Effective Date: July 1, 2021

Senate Bill 439, Allowing use or nonuse of safety belt as admissible evidence in civil actions

Talking Points

- Allows for the introduction of evidence in a civil action of the use or non-use of a safety belt in certain circumstances.
- Provides common sense tort reform.

Summary

This bill allows introduction of evidence of use or non-use of a safety belt in a civil action, under the following circumstances:

- If the injured party is a driver or adult passenger, evidence of non-use of a safety belt is not admissible as evidence of negligence, except in product liability claims against the manufacturer of a vehicle or component of it. Evidence of non-use of a safety belt is admissible to show that the failure to wear a safety belt exacerbated or contributed to damages. Presentation of this evidence would require expert testimony; or
- If the injured party is a child passenger, evidence of non-use of a safety belt is not admissible to show negligence of the child or reduce his/her damages. Evidence that the child was not wearing a safety belt is admissible to show comparative fault of the driver.

The protections of this bill do not apply if the driver at fault was under the influence of drugs or alcohol or committed the felony offense of fleeing from a law-enforcement officer's directions to stop and caused bodily injury, death, or did so while under the influence.

The bill also redefines "passenger vehicles" in which safety belts are mandatory as a vehicle designed to transport 15 people (up from 10) or fewer, including the driver.

Effective Date: July 6, 2021

Senate Bill 458, Relating to possession of firearms by individuals during state of emergency

Talking Points

- Limits the authority of all levels of government to limit lawful access to firearms and prohibits discrimination against firearm related businesses during a state of emergency.
- Allows for any individual adversely affected by a violation of the bill to seek relief against any state agency, county, municipality, or any state or local official. A prevailing plaintiff is entitled to actual damages, court costs and fees, and reasonable attorney's fees.

Summary

The purpose of this bill is to limit the authority of all levels of government to limit lawful access to firearms and prohibits discrimination against firearm related businesses during a state of emergency. New language states that during a federal or state declared state of emergency, a government entity may not:

- Prohibit or restrict, seize, confiscate, authorize the seizure of, or require registration of any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or otherwise lawful personal weapons other than firearms.
- Suspend or revoke a license, or provisional license, to carry a concealed deadly weapon.
- Close or limit the operating hours of any entity selling or servicing firearms, ammunition, equipment, and supplies unless the closing or limitation of hours applies generally within the jurisdiction.
- Close or limit the hours of any indoor or outdoor shooting range.
- Place restrictions or quantity limitations of any entity selling or servicing firearms, ammunition, equipment, and supplies.

If any individual is adversely affected by a violation, or is subjected to an action, may seek relief against any state agency, county, municipality, or any elected or appointed official or employee of this state, a county, or municipality. The individual may also bring an action for the return of confiscated property. A prevailing plaintiff is entitled to actual damages, court costs and fees, and reasonable attorney's fees.

Effective Date: July 8, 2021

Senate Bill 472, Updating criteria for regulating certain occupations and professions

Talking Points

- Updates the process by which existing occupational licensing regulation is reviewed and proposals for new regulation and licensure of occupations and professions are considered.
- Mandates that PERD, in evaluating the application, must determine if the proposed regulation uses the least restrictive means necessary to protect consumers from substantiated harms.
- This bill was one of several this session that provides continued occupational licensing reform.

Summary

The Legislature regulates Chapter 30 occupations and professions through the licensing and certification process. Article 1A of Chapter 30 of the code sets out the process by which existing regulation is reviewed and proposals for new regulation and licensure of occupations and professions are considered.

The Joint Standing Committee on Government Organization is charged with the responsibility of overseeing the review of proposals to enact regulation of professions or occupations and refers the assessment of those proposals to the Performance Evaluation and Research Division (PERD) of the Office of the Legislative Auditor. Any individual or group that proposes regulation of an unregulated occupation or profession must submit an application to the Joint Standing Committee.

The bill mandates that PERD, in evaluating the application, must determine if the proposed regulation uses the least restrictive means necessary to protect consumers from substantiated harms. PERD will use a rebuttable presumption that consumers are sufficiently protected by market competition and private remedies. That presumption may be negated by a finding of significant harm and that consumers do not have the means to protect themselves against it. The bill provides recommendations for remedies for specific types of harm.

PERD's analysis must include an assessment of the costs and effects of the requested regulation. It should also include comparison with the way in which other states regulate the occupation or profession under consideration.

PERD's report on the application must be submitted to the Joint Standing Committee within nine months after receiving the application. The Joint Standing Committee may conduct public hearings on the application and PERD's report. The PERD report is required to be posted on the Legislative Auditor's website. The Joint Standing Committee must make the report and any additional findings available to the public.

With respect to professions and occupations already regulated, the bill would require PERD to review current occupational licensing selected by the Joint Standing Committee chairs, commencing July 1, 2021. PERD would complete its review of all licenses within eight years and repeat the cycle each subsequent eight-year period. In its review, PERD may recommend, among other things, that the licensing remain as it is, converted to a less restrictive regulation, be repealed, or that the scope of practice be redefined.

Additionally, the bill grants PERD the authority, in conducting its evaluation, to request information from individuals working in a profession, a board member who regulates the profession, and any other

interested party to evaluate that occupation, its labor market economics, and other factors. The bill also permits the Joint Committee on Government Organization to allow professionals who work in a field or a board member who regulates the profession to give testimony at public hearings after receiving the required report.

Effective Date: July 6, 2021

Senate Bill 658, Requiring sheriff's departments to participate and utilize Handle With Care Program for trauma-inflicted children

Talking Points

- Provides that the Sheriffs' Bureau of Professional Standards may assist the sheriffs of each county to provide "Handle With Care" program training to law enforcement supervisors and patrols to help trauma-inflicted children in the public or private school system.
- Under the Handle With Care program, if a law enforcement officer encounters a child during a call, that child's information is forwarded to the school before the school bell rings the next day so that appropriate steps can be taken to assist the child.

Summary

This bill amends and reenacts the West Virginia Sheriffs' Bureau of Professional Standards general power and duties in W.Va. Code §7-26-2 to include subsection (b): The bureau may assist the sheriffs of each county of the state to provide "Handle With Care" program training to law enforcement supervisors and patrols and to actively participate in and use all law enforcement related components of the "Handle With Care" program to help trauma-inflicted children in the public or private school system.

The West Virginia Defending Childhood Initiative Handle With Care Program promotes school and community partnerships to protect children with the goal of helping traumatized children heal and thrive. Under the Handle With Care program, if a law enforcement officer encounters a child during a call, that child's information is forwarded to the school before the school bell rings the next day. The school implements individual, class and whole school trauma-sensitive curricula to that traumatized children are "Handled With Care." If a child needs more intervention, on-site trauma-focused mental healthcare is available at the school.

The program requires law enforcement supervisors to attend training and then provide training to patrols on department policy to identify, document, and report children encountered on the scene of calls. Officers must be familiar with appropriate on-scene response when children are present to ensure the impact of trauma is minimized.

Effective Date: July 8, 2021

Senate Joint Resolution 4, Incorporation of Churches or Religious Denominations Amendment

Talking Points

- This constitutional amendment, if ratified by the voters, will remove a prohibition in the West Virginia Constitution against churches or religious denominations incorporating.
- This prohibition has been in the Constitution since 1863, but it has been ignored by the Secretary of State's Office since Virginia's similar provision was ruled unconstitutional in 2002.
- Will be placed on the ballot during the general election in November 2022.

Summary

This resolution, if ratified by the voters of West Virginia, removes a prohibition in the State Constitution against churches or religious denominations incorporating. It has been in West Virginia's Constitution since 1863. In 2002, the U.S. District Court for the Western District of Virginia, in a case brought by Thomas Road Baptist Church found that the provision violates the Free Exercise Clause of the 1st Amendment to the U.S. Constitution. Falwell v. Miller, 203 F. Supp. 2d 624 (2002). Additionally, ratification of the amendment would serve to conform law to practice. This resolution will be placed on the ballot before voters during the general election held in November of 2022.

Election Date: November 2022 General Election

House Bill 2001, Relating generally to creating the West Virginia Jumpstart Savings Program

Talking Points

- Establishes the West Virginia Jumpstart Savings Program, which allows individuals who wish to pursue a vocation or trade to make up to \$25,000 in annual tax-free contributions to a savings and investment account that can then be used to help cover the business startup costs, equipment, tools, certifications and licenses needed for their occupation.
- Allows individuals who wish to pursue a vocation or trade, ranging from welding to cosmetology, to make tax-free contributions to a savings and investment account.
- Will give people a new, separate alternative to allow them to save and prepare for entering the workforce.

Summary

This bill establishes the West Virginia Jumpstart Savings Program. It requires the program to be administered by a board consisting of seven members. It requires the board to establish the Jumpstart Savings Trust Fund to receive all moneys from account owners or from any other source. It establishes the Jumpstart Savings Program Expense Fund to receive all fees, charges, and penalties collected by the board; and provides that all expenses incurred by the board or the Treasurer in developing and administering the program are to be payable from the fund. It allows the board to implement the program using financial organizations as account depositories and managers. The bill requires that to open a Jumpstart Savings account, an account owner must: 1) Provide all information required by the Treasurer; 2) Make a minimum opening deposit of \$25; and 3) Name a single person as the designated beneficiary.

The bill requires the Treasurer to deposit \$100 from the Jumpstart Savings Expense Fund into a newly opened Jumpstart Savings account if certain conditions are satisfied. It sets forth the following as qualified expenses:

- The purchase of tools, equipment, or supplies by the beneficiary to be used in certain occupations or professions.
- Fees for required certification and licensure to practice certain trades or occupations in this state; and
- Costs incurred by the beneficiary that are necessary to establish a business in this state in which the beneficiary will practice certain occupations or professions when the costs are exclusively incurred and paid for the purpose of establishing and operating the business.

Lastly, it provides tax modifications to incentivize a contribution to an account; prevent an account holder from being taxed upon a distribution when used for qualified expenses; to prevent money rolled over from a Jumpstart Savings Account to a WV ABLE account from being subject to state income tax; to prevent money rolled over from a SMART529 college savings account to a Jumpstart Savings account from being subject to state income tax; and to incentivize employers to make matching contributions to a Jumpstart Savings Account.

Effective Date: June 9, 2021

House Bill 2002, Relating to Broadband

Talking Points

- Supports broadband expansion through several avenues, including reforming DOH rights-of-way procedures to allow more efficient access for broadband providers.
- It establishes a state Office of Broadband, which is given powers and duties to facilitate broadband expansion, including conducting accurate mapping.
- It provides for the preemption of any statute or ordinance, to the extent such inhibits broadband installation, including agreements that provide barriers to pole access.

Summary

This bill provides for increased broadband expansion in numerous ways. First of all, it amends the dig once requirements involving the Division of Highway rights-of-way and the installation of in-ground telecommunications facilities. Control is given to the division to deny applicants if certain deficiencies exist in any proposed project. The division is also to create, maintain, and provide a consolidated checklist or flow chart of all state or federal regulatory requirements, including all agency reviews, agency regulatory required approvals, forms, and permits related to the installation of broadband, whether buried or aerial and update it annually.

It amends the dig once requirements to change the agency which must be informed of any applicant's proposed dig to the Office of Broadband, and charges that office with ensuring compliance with the section. It allows the division to use a telecommunication carrier's trench, as well, and makes clear that it is in the division's discretion whether any apportioned costs are warranted to it. This section is also changed to tighten up language regarding excepted trenches (total continuous length < 1000 feet), and states that any spare conduit or innerduct shall go to the Office of Broadband, to be made available for sale or lease. The PSC remains the arbiter of any disputes among trench-sharing competitors.

It repeals in-kind compensation regarding dig once. It also allows the division to enter into an agreement with any carrier to use excess telecommunications facilities which it owns or controls (subject to the Vertical Real Estate Management and Availability Act). It permits the division to transfer or assign the ownership, control, or any rights related to any excess telecommunications facilities owned or controlled by the division to any other state agency, upon the Governor's written approval.

The bill modifies the Broadband Enhancement Council's powers and duties to include the duty to explore ways to achieve digital equality in the state, to change its target of advice and recommendations to the Office of Broadband, to remove the duty to assist in broadband mapping, and to remove any affirmative fundraising or spending powers and oversight.

It creates the Office of Broadband within the Department of Economic Development, to be managed by a director who reports to that department's secretary. It lays out the powers and duties of the Office of Broadband, consisting largely of the affirmative actions regarding fundraising, spending, mapping, creation of guidelines, reporting, contracting, data collection, etc. that once was the charge of the Broadband Enhancement Council. Data collection is permissive and comes with strict regulation regarding the safeguarding and disclosure of the data collected, as does mapping (though mapping is a mandatory function of the office). The Secretary of the Dept of ECD is also given W.Va. Code §29A-3-1 rulemaking authority to carry out this article's intent.

Regarding the requirement that the Office map the broadband services of the state, the office must include designations of unserved areas of the state. “Unserved” means an area lacking broadband internet service from at least one broadband internet service provider offering all of the following in at least one service plan to residential consumers: 1) an actual downstream data rate of at least 25 megabits per second; 2) an actual upstream data rate of at least three megabits per second; 3) unlimited data usage without overage charges; and 4) unlimited data usage without “throttling” or reduction of downstream or upstream data rate due, in whole or in part, to the amount of data transferred in any period.

The bill creates two new sections in Article 3 of Chapter 31G of the code dealing with conduit installation. The first new section gives political subdivisions of the state the power to install their own broadband network, or to partner with essentially any entity or combination of entities to achieve that goal, with similar language regarding the operation of a fiber network.

The second new section in Article 3 of Chapter 31G regards compatible use and gives broadband operators authorization to construct and operate broadband networks over public rights-of-way and through easements dedicated for compatible uses (“a public or private easement for electric, gas, telephone, or other utility transmission”). The operator must avoid all unnecessary damage and must indemnify the state or political subdivision for it. The authorization is subject to statutes, ordinances, and rules governing the construction, maintenance, and removal of overhead and underground facilities of public utilities. It is also subject to the counties’ rules for their own highways and public welfare rules adopted by the DOT for federal-aid and state highways. Finally, regarding the railroads, nothing in this article shall be construed to provide for any greater or any lesser compliance with any safety policy or procedure established by the railroad with respect to the construction of utility crossings across the railroad’s trackway that is applicable to any other similarly situated utility, whether utilizing aerial or buried lines.

It amends Article 4, chapter 31G, dealing with Make-Ready Pole Access to, first, include in the article’s definitional section the definition of “applicable codes,” then provides that, in the event an ILEC (Incumbent local exchange carrier - a telephone company in the U.S. that was providing local service when the Telecommunications Act of 1996 was enacted) requires and accepts payment for make-ready work, and fails to perform that work within 45 days, the ILEC which has been paid and which has failed to perform the work, shall immediately return and refund the moneys paid for that work which was not completed. Failure to do so results in fines and costs.

The bill also amends W.Va. Code §31G-4-4, regarding the PSC, charging the commission with the promulgation of rules to deal with various broadband issues, like abandoned cable, conductor, and related facilities attached to utility poles. This section charges the PSC with the promulgation of rules to govern the timely transfer of facilities from an old pole to a new pole and the removal of utility poles that have had electric facilities moved to new poles but continue to have other facilities attached in the telecommunications space on the old existing poles.

Finally, this bill creates Article 6 within Chapter 31G of the Code which establishes a blanket preemption of any statute or ordinance, to the extent it inhibits broadband installation. Also, no private entity’s policy, agreement, contract, HOA rule, or anything of the like, promulgated after the effective date of this bill, may regulate or prevent the exterior installation of antennas and equipment necessary to or typically utilized for broadband deployment and the terms of any such document shall be strictly construed in favor of encouraging and assisting broadband installation and deployment.

Similarly, any statute, rule, regulation, or ordinance regarding pole attachment, spacing, positioning, or order by or between any Investor Owned Utility (“IOU”) and any Incumbent Local Exchange Carrier

("ILEC") and/or Competitive Local Exchange Carrier ("CLEC") which would seek to provide broadband service, is pre-empted to the extent necessary in favor of such broadband installation or deployment. Any corporate agreements regarding the same issue are strictly construed in favor of broadband installation and deployment.

Effective Date: May 27, 2021

House Bill 2005, Relating to health care costs

Talking Points

- The purpose of the bill is to increase the transparency of medical costs.
- Requires the Insurance Commissioner to enforce the federal medical transparency law that was enacted in 2020, the No Surprises Act.
- Among other things, the No Surprises Act protects patients from receiving surprise medical bills resulting from gaps in coverage for emergency services and certain services provided by out-of-network clinicians at in-network facilities, including by air ambulances.

Summary

The bill requires the Insurance Commissioner to enforce the No Surprises Act (the Act) H.R.133, Public Law 116-200 against health insurers, medical providers, and health care facilities. The Act addresses surprise medical billing at the federal level. The key takeaways from the Act are:

- Protects patients from receiving surprise medical bills resulting from gaps in coverage for emergency services and certain services provided by out-of-network clinicians at in-network facilities, including by air ambulances.
- Holds patients liable only for their in-network cost-sharing amount, while giving providers and insurers an opportunity to negotiate reimbursement.
- Allows providers and insurers to access an independent dispute resolution process in the event disputes arise around reimbursement. The legislation does not set a benchmark reimbursement amount.
- Requires both providers and health plans to assist patients in accessing health care cost information.

The Commissioner's enforcement powers include the abilities to assess a fine of up to \$10,000 per violation, assess administrative penalties, seek guidance from other regulatory agencies, seek legal assistance or representation from the Attorney General, and promulgate rules. It provides for a January 1, 2022, internal effective date for the Commissioner's new duties.

Effective Date: July 7, 2021

House Bill 2006, Relating to the West Virginia Contractor Licensing Act

Talking Points

- Continues the Contractor Licensing Board as it currently exists but moves the provisions of the West Virginia Contractor Licensing Act from within Chapter 21 and the Division of Labor to a new article within Chapter 30, making the Board a standalone board.
- Alters the definition of “contractor”, to exclude work of a total value under \$5,000 for residential work and under \$25,000 for commercial work. Previously, only work of a total value of under \$2,500 was excluded. It also excludes landscaping services and residential and commercial painting services.
- This bill was one of several this Session that provides continued occupational licensing reform.

Summary

This bill moves the provisions of the West Virginia Contractor Licensing Act from within the regulation of the Division of Labor (Chapter 21) to a new article, Article 42, within Chapter 30 of the code. The effect of the transfer is to make the Contractor Licensing Board a standalone board that is situated within the chapter of code wherein the large majority of licensing boards are located.

The bill continues the Contractor Licensing Board as it currently exists. Inspections to enforce the Licensing Act will continue to be performed by inspectors from the Division of Labor, as is currently the practice. There is a two-year period within which the Division must perform the inspections, under contract with the board. The board is then responsible for the inspections and may continue to contract with the Division of Labor for those services.

The bill alters the definition of “contractor” to exclude work of a total value under \$5,000 for residential work and under \$25,000 for commercial work. The current code excludes work of a total value of under \$2,500. It also excludes landscaping services and residential and commercial painting services.

Moving the Contractor Licensing Board to chapter 30 makes the board subject to the cycle of performance review by PERD pursuant to the Performance Review Act. The bill amends W.Va. Code §4-10-10 to add the board to the PERD review cycle. Under current law, as an agency within the Department of Commerce, there is no guaranteed cyclical review of the board’s operations. It also makes the board subject to the sunrise review provisions of W.Va. Code §30-1A-1 et seq., which requires PERD and legislative review of applications to license an unregulated trade or occupation or to expand the scope of existing licensing. Finally, under chapter 30, the Contractor Licensing Board is subject to the automatic sweep provisions of W.Va. Code §30-1-10, which requires the State Treasurer to sweep funds of \$10,000 or twice the board’s annual budget, whichever is greater, into the General Revenue Fund. Under current code, the Contractor Licensing Board is not subject to that sweep provision.

Effective Date: June 15, 2021

House Bill 2008, Amending requirements for licensure relating to elevator mechanics, crane operators, HVAC, electricians, and plumbers

Talking Points

- Removes certain licenses with national certifications, and modifies the hours required for licenses in areas such as HVAC Technicians, electricians, fire protection workers, and plumbers.
- Broadens slightly the exemptions from requiring a license to perform electrical work.
- This bill was one of several this Session that provides continued occupational licensing reform.

Summary

This bill removes certain licenses with national certifications, and modifies the hours required for licenses in areas such as HVAC Technicians, electricians, fire protection workers, and plumbers. It provides that a person may not operate a crane or tower crane without a national certification according to OSHA regulation 29 CFR §1926.1427 and any amendments that may be made to it. The bill permits the Commissioner of the Division of Labor enter into a cooperative agreement with OSHA as it relates to crane operators. Any state certifications that may expire during the year starting January 1, 2021, will not expire until January 1, 2022. The bill indicates that all funds remaining in the Crane Operation Certification Fund on January 1, 2022, shall be appropriated by the Legislature.

The bill alters the qualifications for a journeyman plumber to be the passage of a journeyman plumber written examination with a score of at least 70 percent. The requirements for a master plumber are also altered in the bill by requiring that the person pass a master plumber written examination with a score of at least 70 percent and at least one year of work experience as a journeyman plumber.

The bill adds that a HVAC Technician is a person with 2,000 hours of HVAC related work, training, and experience along with the current requirements (i.e., passing a written examination) and prohibits an applicant seeking licensure in this state from being required to provide documentation of over 2,000 hours of work experience. The bill adds a section establishing veteran qualification for licensure as HVAC Technician. The section allows any veteran to apply for licensure if:

- He or she completed a course while in the service that qualifies him as a HVAC Tech's mate, meets the requirements of the bill;
- He or she was honorably discharged;
- He or she submits a completed application to the Division of Labor; and,
- He or she pays the associated fees.

The section also states that a veteran who has allowed more than 30 years to pass from the date of his or her successful completion of a course of instruction and the date of application for licensure in this state may be required to attend additional training courses.

The bill establishes altered requirements for journeyman electrician license to require one year of electrical work experience. The bill also alters requirements for a master electrician to require at least two years of electrical work experience. The "apprentice electrician" classification is eliminated.

The bill broadens slightly the exemptions from requiring a license to perform electrical work to include:

- A person who performs electrical work with respect to any property, owned or leased, by that person or that person's immediate family; and,
- Any person who performs low voltage electrical work with only low voltage wiring Low voltage electrical work is 80 volts or less, and directly related wiring.

The bill adds a national certification exam from the National Inspection Testing and Certification (NITC) exams for licensure for fire protection work and adds a reference to the National Fire Protection Association for a certified water-based system professional to the fire protection layout definition. The bill alters the requirements for a journeyman sprinkler fitter's qualification to require 2,000 hours of work experience. The bill also permits a person to perform fire protection or damper work without a license, but still requires that a person performing damper work have an HVAC Technician license.

The bill removes criminal penalties for performing regulated work without a license throughout the bill but retains the associated fines for each time a person is caught working without a license.

Effective Date: June 16, 2021

House Bill 2009, Relating to limitations on the use of wages and agency shop fees by employers and labor organizations for political activities

Talking Points

- Prohibits the deductions of union, labor organization, or club dues or fees from the wages of public employees, except for municipal employees covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021.
- Prevents public resources from being used to subsidize private entities and their collection of revenue from public employees.

Summary

The bill amends two sections in the Wage Payment and Collection Act, W.Va. Code §21-5-1 et seq. The changes to these sections preclude deductions of union, labor organization, or club dues or fees from the wages of public employees, except for municipal employees covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021; expand the definition of “deductions” to include union and club fees, labor organization dues or fees, and any form of insurance offered by an employer; define a new term, “assignment”, which incorporates the definition of “assignment of earnings” from the Consumer Credit & Protection Act; replace the notarization requirement for assignments with a requirement that an assignment or order must be in writing; and expressly protect the right of private employers and employees to agree between themselves as to payroll deductions, and expressly protects the right of employees to join, become a member of, contribute to, donate to, or pay dues to a union, labor organization, or club.

The bill amends one section in the Consumer Credit and Protection Act, W.Va. Code §46A-1-1 et seq., by adding union or club fees, labor organization dues or fees, and any form of insurance offered by an employer as deductions which are excluded under the definition of “assignment of earnings”.

The bill makes the following additional changes elsewhere in the Code to correspond with the changes described above.

The bill creates one new section in Chapter 7 (County Commissions and Officers) which provides that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of county officers or employees.

The bill amends one section in Chapter 8 (Municipal Corporations) by providing that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of municipal officers or employees, except for municipal employees covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021.

The bill amends one section in Chapter 12 (Public Moneys and Securities) by removing language that currently allows state officers and employees to authorize voluntary deductions for payment of membership dues or fees to an employee association; authorizing the Auditor to approve and authorize voluntary other deductions as defined in the Wage Payment and Collection Act; removing a proviso regarding existing arrangements for dues deductions between employers or political subdivisions and

employees; and clarifying that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of state officers or employees.

Finally, the bill amends one section in Chapter 18A (School Personnel) by providing that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of teachers or other school employees.

Effective Date: June 17, 2021

House Bill 2012, Relating to public charter schools

Talking Points

- Increases the permissible number of public charter schools.
- Establishes the West Virginia Professional Charter School Board to serve as a charter school authorizer.
- Allows the authorization of two statewide virtual public charter schools.

Summary:

This bill modifies public charter schools in West Virginia in the following ways:

- Increases the current charter school limits of 3 public charter schools until July 1, 2023, and an additional 3 every three years thereafter to 10 in each case.
- Requires the Legislative Auditor to conduct an audit of the public charter school program two years after the first public charter school commences operations and report the findings to LOCEA.
- Requires two or more county boards to initially act together when an application is submitted to form a public charter school with a primary recruitment area that encompasses territory in two or more counties; but if the application is rejected, allows one or more of the individual county boards to approve the application; but provides in that case that the school must be located in one of the counties where the application was approved.
- Adds the West Virginia Professional Charter School Board as a charter school authorizer.
- Clarifies that an education service provider can be a public or private nonprofit or for-profit provider.
- Provides that public charter schools are to be treated and act as their own local education agency (LEA) except as needed under the provisions of the Public School Support Plan for funding purposes.
- Prohibits anything in State Board rule meant to clarify charter school requirements and address unforeseen issues from conflicting with code.
- Amends provisions pertaining to the charter contract:
 - Allows contract to incorporate the approved application.
 - Allows part or all of the charter application to be a part of the charter contract as long as it contains all of the contract requirements.
 - Removes requirement that the charter contract include commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school.
 - Replaces requirements for the charter contract to include certain revocation related provisions with the requirements that the contract include certain renewal related provisions.
 - Requires contract to include the right to be represented by counsel at all meetings, hearings, and interactions between the governing board and the authorizer.
- Establishes deadline of June 30 of the school year before a public charter school's final year of operation for the authorizer to issue contract renewal application guidance to the school.

- Adds annual performance reports and any required financial audits as factors an authorizer is to ground its renewal decisions on.
- Limits revocation of a charter contract to when the authorizer determines that the health and safety of students is threatened, if an administrator employed by or member of the governing board over the charter school is convicted of fraud or misappropriation of funds, there is a failure to meet generally accepted standards of financial management, there is a material breach of the charter contract, there is a substantial violation of any provision of law from which the public charter school is not exempted, or there are dire and chronic academic deficiencies.
- Allows a charter applicant or governing board to appeal a decision of an authorizer to the State Board within 30 days of the authorizer's decision; requires the State Board to promulgate rules establishing the process and timeline for the appeals; and requires the State Board to remand the decision back to the authorizer under certain specified conditions.
- Allows the Professional Charter School Board to authorize two statewide virtual public charter schools; and limits enrollment in a statewide virtual public charter school enrollment to no more than 5 percent of the headcount enrollment per year.
- Allows county boards to authorize virtual public charter schools for students in an identified primary recruitment area; limits number of virtual public charter schools each county can authorize to no more than one; limits attendance to a virtual public charter school to students within the primary recruitment areas identified in the application; prohibits an application from including within its primary recruitment area a location that's within the primary recruitment area of another virtual public charter school; and limits county public charter school enrollment to no more than 10 percent of a county's headcount enrollment.
- Sets forth numerous other requirements and parameters applicable to virtual public charter schools.
- Creates the WV Professional Charter School Board composed of five voting members appointed by the Governor and the Chairs of the Senate and House education committees as nonvoting ex officio members; sets forth the qualifications and parameters for the appointed members; provides for staggered two-year terms; addresses removal of appointed members; provides for immunity from civil liability in certain instances; authorizes the employment of an executive director and staff; requires at least bi-annual meetings; requires reimbursement of board member expenses; requires the board to investigate official complaints; and allows the board to conduct audits.

Effective Date: June 1, 2021

House Bill 2013, Relating to the Hope Scholarship Program

Talking Points

- Establishes the Hope Scholarship Program, an education savings account program that will go into effect July 1, 2022, with applications opening March 1, 2022.
- Eligibility is limited to those enrolled full-time in a public elementary or secondary school in this state for at least 45 calendar days during an instructional term at the time of application and until an award letter is issued by the board.
- Provides funds equal to about \$4,600 per year, depending on the annual School Aid Formula, which will be deposited into a transparent account monitored by the Treasurer's Office.

Summary

The bill establishes the Hope Scholarship Program, an education savings account program that will go into effect July 1, 2022, with applications opening March 1, 2022. Funding of Hope Scholarships is based on multiplying the greater of two percent of net public school enrollment or the total number of eligible Hope Scholarship applications received by the prior year's statewide average net state aid per pupil. It limits eligibility to those enrolled full-time and attending a public elementary or secondary school program in this state for at least 45 calendar days during an instructional term at the time of application and until an award letter is issued by the board; enrolled full-time in a public elementary or secondary school program in this state for the entire instructional term the previous year; or eligible at the time of application to enroll in a kindergarten program. The bill further provides the following:

- Removes aforementioned eligibility limitation effective July 1, 2026, if on July 1, 2024, the participation rate in the Hope Scholarship program during the previous school year is less than five percent.
- Creates the WV Hope Scholarship Board to administer the program.
- Requires the Hope Scholarship Program to be operational no later than July 1, 2022.
- Requires the board to make the applications available by March 1, 2022; and sets forth the conditions for application approval.
- Creates a WV Hope Scholarship Program Fund to be administered by the Treasurer.
- Requires the annual amount of a Hope Scholarship to be equal to the prior year's statewide average net state aid per pupil subject to administrative costs.
- Requires an amount not to exceed 5 percent of the fund to be transferred annually to the WV Hope Scholarship Program Expense Fund to cover annual administrative costs.
- Sets forth the conditions under which the board is to cease making deposits into an account; and provides a process for closing an account and returning the remaining funds to the state if any of those conditions occur.
- Sets forth a list of qualifying expenses which are the expenses for which the Hope Scholarship funds can be used.

- Requires annual renewal of the Hope Scholarship; provides that the recipient remains eligible to apply for renewal until one of the conditions for ceasing deposits into an account occurs; and requires that the board verify certain information with the WVDE every year.
- Provides a process for closing an account and returning the remaining funds to the state if the parent fails to renew a Hope Scholarship.
- Includes other provisions relating to allowing the board to contract with private organizations to administer the program; and requiring the board to implement a system for payment of services from Hope Scholarship accounts.
- Requires the board to conduct or contract for the random auditing of individual accounts as needed to ensure compliance with the Hope Scholarship statutory and rule requirements; sets forth the reasons for which the board can remove a parent or eligible recipient from the program and close an account; and requires a parent or Hope Scholarship student be able to appeal the decision to make the student ineligible for funds to the board.
- Allows the board to conduct or contract for the audit of education service providers accepting payments from Hope Scholarship accounts; allows the board to bar the education service provider from continuing to receive payments if the board determines that an education service provider has intentionally and substantially misused funds; and requires that an education service provider be able to appeal a decision to bar it from receiving payments to the board.
- Sets forth specific requirements applicable in order for an education service provider to be eligible to accept payments from a Hope Scholarship account.

Effective Date: June 15, 2021

House Bill 2014, Relating to role of the Legislature in appropriating federal funds

Talking Points

- Provides clarity the role of the Legislature in appropriating federal funds received by the state in all events, including public emergencies.
- Limits executive authority to spend certain emergency federal funds received when the Legislature is not in session to \$150 million.
- Requires the executive branch to report to the Legislature on certain federal funds and the expenditures.

Summary

The purpose of this bill would amend state code governing the appropriation of state funds, including federal funds deposited into the State Treasury, reductions and expirations of appropriations in the event of revenue shortfalls, and updating of obsolete provisions.

The bill provides clarity the role of the Legislature in appropriating federal funds received by the state in all events, including public emergencies. Certain provisions are updated to modernize outdated language regarding federal block grants.

Several provisions are updated to state expressly that the only appropriation that authorizes expenditure of federal funds from the State Treasury under the state constitution is an appropriation made by the Legislature.

The bill limits executive authority to spend certain emergency federal funds received when the Legislature is not in session. A new section is added to limit the Governor's authority to expend such funds as follows:

"No amount of such unanticipated federal funds for an existing program, for a significant alteration of an existing program, or for the creation of a new program made available to the state for costs and damages resulting from an emergency including, but not limited to, flooding, forest fires, earthquakes, storms or similar natural disasters, civil disobedience, human-caused disasters, infectious disease outbreaks, or similar public health or safety emergencies that occur and are received while the Legislature is not in session and that are declared by the Governor as a state of emergency in excess of \$150 million for any part or the whole of the declared emergency may be expended without appropriation by the Legislature enacted following receipt of the funds. No provision of this code or any appropriations act in effect upon the receipt of unanticipated federal funds made available to the state for costs and damages resulting from an emergency including, but not limited to, flooding, forest fires, earthquakes, storms or similar natural disasters, civil disobedience, human-caused disasters, infectious disease outbreaks, or similar public health or safety emergencies that occur and are received while the Legislature is not in session and that are declared by the Governor as a state of emergency may be construed to authorize the appropriation of those funds, except as provided in this subsection."

In the limited circumstances permitting the expenditure of emergency federal funds for existing programs without further legislative appropriation, the bill requires the Governor to provide regular financial reports of proposed and actual expenditure of the funds to the President of the Senate, the Speaker of the House of Delegates, the chairs of the respective committees on finance of the two houses of the Legislature, and the Legislative Auditor.

The bill clarifies that if there is any conflict between the new provisions enacted by this bill and any other provision of law relating to receiving or expending federal funds, the provisions enacted under this bill shall govern and control and supersede any interpretation of budget language.

The bill states that copies of the Secretary of Revenue's annual report to the Governor concerning the administration of the budget must be submitted to the Legislature in the manner required for other reports made to the Governor.

The bill requires additional information on the final monthly report required to be certified by the Secretary of Revenue to the Governor and the Legislative Auditor, et al., as to revenue estimates and collections during each fiscal year. The report must show the proportion which the amount actually collected during the preceding month bears to the collection estimated by the Secretary for that month, as well as the proportion which the amount actually collected during the preceding fiscal year bears to the appropriations made for that year. The bill states that no reductions of appropriations may be made after the end of the fiscal year.

The Secretary of Revenue's annual Consolidated Report of Federal Funds (now required to be submitted to the Governor no later than December 31) also include a detailed description of all federal funds anticipated to be received by the state during the remainder of the fiscal year.

The bill requires all federal funds received by the state to be deposited in the State Treasury in a special fund apart from the general revenue fund, and that those federal funds may only be expended upon appropriation of the Legislature.

The bill provides for the expiration of reappropriated funds at the end of a fiscal year only when revenues actually collected in a fiscal year fail to equal or exceed the amounts appropriated by the Legislature for that fiscal year.

The bill reiterates that where such general revenue funds are reappropriated by the budget act for the ensuing fiscal year, they do not expire at the end of the fiscal year just ended.

Effective Date: March 31, 2021

House Bill 2019, Elevating Economic Development and Tourism Departments

Talking Points

- Establishes the Department of Economic Development and Department of Tourism and elevates the directors of the previous offices to Cabinet Secretaries.
- Does not increase costs to the state, only redesignates offices and positions.

Summary

The purpose of this bill is to reorganize and redesignate the Development Office as the Department of Economic Development and the Tourism Office as the Department of Tourism. The bill raises the Department of Economic Development, removing it from the Department of Commerce to a separate and distinct department in the executive branch and redesignates the executive director of the development office as the Secretary of the Department of Economic Development.

The bill also raises the Department of Tourism, removing it from the Department of Commerce to a separate and distinct department in the executive branch and redesignates the executive director of the tourism office as the Secretary of the Department of Tourism. The bill exempts both new departments from the requirements of the Purchasing Division.

The bill requires the Secretary for the Department of Economic Development and the Secretary for the Department of Tourism be appointed by the Governor with advice and consent of the Senate for the Governor's term. The Tourism Commission is renamed the Tourism Advisory Council and adds the Secretary of the Department of Economic Development as an ex officio member. The Department of Economic Development and the Department of Tourism to utilize existing resources of the Department of Commerce and permits both departments to enter in agreements to utilize resources.

Effective Date: May 27, 2021

House Bill 2024, Expand use of telemedicine to all medical personnel

Talking Points

- Expands telehealth opportunities through several provisions.
- Allows a physician-patient relationship to be established through audio-only calls or conversations that occur in real time.
- Provides for payment parity, which requires a telehealth visit to be paid the same as in-office visit.

Summary

The bill regulates telehealth services. The bill applies to all health care practitioners licensed pursuant to chapter 30, including physicians (MD & DO), physician assistants, dentists, pharmacists, nurses, practical nurses, veterinarians, chiropractors, physical therapists, athletic trainers, psychologists, radiologist technicians, hearing aid dealers, occupational therapists, social workers, licensed. Unless provided for by statute or legislative rule, a health care board shall propose an emergency rule to regulate telehealth by rule. The rule shall include the following:

- The practice of the health care service occurs where the patient is located at the time the telehealth services are provided.
- The health care practitioner who practices telehealth shall be: 1) Licensed in good standing in all states in which he or she is licensed and not currently under investigation or subject to administrative complaint; and 2) Registered as an interstate telehealth practitioner with the appropriate board in West Virginia.
- When the health care practitioner-patient relationship is established.
- With respect to the standard of care with respect to the established patient, the patient shall visit an in-person health care practitioner within 12 months of using the initial telemedicine service or the telemedicine service shall no longer be available to the patient until the in-person visit is obtained. This requirement may be suspended, in the discretion of the health care practitioner on a case-by-case basis and it does not apply to acute inpatient care, post-operative follow up checks, behavioral medicine, addiction medicine, or palliative care.
- A prohibition on controlled substance listed in Schedule II drugs, provided that these prescribing limitations do not apply to a physician or a member of the same group practice with an established patient.
- Establish the conduct of a registrant for which discipline may be imposed by the board of registration.
- Establish a fee, not to exceed the amount to be paid by a licensee, to be paid by the telehealth practitioner in this state.
- A reference to the Board's discipline process.
- A registration issued pursuant to the provisions of this section authorize a health care professional to practice from a physical location within this state without first obtaining appropriate licensure.

- By registering to provide interstate telehealth services to patients in this state, a health care practitioner is subject to the laws regarding the profession in this state, the jurisdiction of the board, notifying the state of any restrictions on his or her license.
- A person currently licensed in this state is not subject to registration.

The bill amends the telemedicine practice act for the Board of Medicine and the Osteopathic Board. The bill removes language, in both acts, that prevented a physician-patient relationship from being started via audio-only communication and specifically provides that the physician-patient relationship can be established through the use of audio-only calls or conversations that occur in real time.

With respect to prescribing limitations, both acts have limitations on the prescription of schedule II drugs but have an exception for established patients.

Both boards have emergency rulemaking to pass a rule consistent with the legislative changes made during the 2021 Legislative session.

The bill requires PEIA and other health insurers which issues, renews, amends, or adjusts a plan, policy, contract or agreement on or after July 1, 2021 to pay a negotiated rate for a virtual telehealth encounter and shall provide reimbursement for a telehealth service for an established patient or care rendered on a consulting basis to a patient, located in an acute care facility whether inpatient or outpatient on the same basis and at the same rate under a contract, plan, agreement or policy as if the service is provided through an in-person encounter rather than provided via telehealth.

Effective Date: March 30, 2021

House Bill 2025, Provide liquor, wine, and beer licensees with some new concepts developed during the State of Emergency utilizing new technology to provide greater freedom to operate in a safe and responsible manner

Talking Points

- Updates antiquated alcohol and licensing laws as well as provides for new methods of business that were allowed during the pandemic to become permanent.
- Reduces permit fees paid by businesses until 2023.
- Expands outdoor dining and outdoor street dining areas when authorized by a municipality.
- Facilitates the economic development of hard cider in West Virginia by reclassifying hard cider in code.

Summary

The purpose of this bill is to provide liquor, wine, and beer licensees with some new concepts developed during the State of Emergency utilizing new technology to provide greater freedom to operate in a safe and responsible manner, and additionally to provide new licenses to reflect societal requests, by providing:

- Considering COVID-19, and its impact on the hospitality industry, there is a reduction in license fees beginning July 1, 2021. The licensee shall pay one-third of the fee the first year, two-thirds of the fee the second year, and full fees the third year.
- The ability to begin sales of beer, wine, and liquor at 6:00 a.m.
- Permitting a 16-year-old to be employed in the sale and service of alcohol when supervised by a person 21 years of age or older.
- The ability to offer sealed liquor drinks in a craft cocktail, sealed wine, and sealed beer by a Class A licensee or a third party, who obtains a third-party delivery license, with a food order utilizing telephone, mobile ordering app, or web-based software; there is no fee for the existing licensee. The third-party license fee is \$200 to deliver each type of alcohol.
- A nonintoxicating beer or nonintoxicating beer retail transportation permit, a private wine delivery permit, and craft cocktail delivery permit to transport a food order and beer, wine, and liquor in a vehicle to a purchasing patron; The convenience fee may not exceed five dollars.
- Outdoor dining and outdoor street dining areas when authorized by a municipality for beer, wine, and liquor; there is no fee for either.
- Authorizing in-person or in-vehicle delivery while picking up food and sealed nonintoxicating beer, nonintoxicating craft beer, wine, or craft cocktail growler orders-to-go.
- Allows offering pre-mixed alcoholic drinks for sale to the public.
- The nonintoxicating beer floor plan extension fee was reduced from \$100 to \$50.
- An unlicensed brewer or home brewer temporary license to attend a limited number of fairs and festivals in West Virginia and provide nonintoxicating beer to patrons which allows market testing in the state.

- Permitting distilleries, mini-distilleries, micro-distilleries, wineries, and farm wineries to operate a private manufacturer club on their licensed premises which can include outdoor spaces in the defined floor plan.
- Permitting owners of distilleries, mini-distilleries, and micro-distilleries to operate wineries farm wineries, brewers, and resident brewers, and vice versa for wineries and farm wineries.
- Expanded definitions and requirements for pre-mixing alcoholic drinks not in the original container with public health and safety issues addressed.
- A new license for a private caterer which is already licensed as a private club restaurant to caterer food and alcohol to unlicensed venues.
- A new license for a private club bar which only provides pre-packaged or basic food in a limited kitchen.
- A new license for a private club restaurant which provides freshly prepared food in a restaurant style kitchen.
- A new license for a private tennis club bar where the facility has tennis courts and other grounds which could encompass the licensed premises.
- A new license for a private wedding venue or barn where food and alcohol are provided on limited basis and the licensee does not operate with daily bar hours.
- A new license for a one-day license for a charity to conduct a liquor auction in conjunction with a private club.
- A new license for a multi-vendor fair and festival license where multiple vendors may share liability and responsibility when conducting a joint alcohol event authorized by a municipality.
- A new license for a private professional sport stadium for alcohol sales, where professional sports are played.
- A new license for a private multi-sport complex for alcohol sales of substantial acreage where multiple sports are played.
- A new license for a private farmers market where multiple vendors and retailers can share liability and responsibility for alcohol sales throughout the property.
- Facilitating the economic development of hard cider in West Virginia by reclassifying hard cider in code, establishing a hard cider tax rate; tax collection; creating a new fund for the Agriculture Department to facilitate fruit production for use in hard cider, and additional hard cider requirements.
- Authorizing the ability to offer sealed wine growlers from wineries, farm wineries, and various wine retailers.
- Providing additional exceptions to the criminal penalty for the unlawful admission of children to dance house for certain private clubs with approved age verification systems.

Effective Date: May 10, 2021

House Bill 2026, Relating to the modernization of the collection of income taxes by adopting uniform provisions relating to the mobile workforce

Talking Points

- Modernize the collection of corporate net income taxes by adopting uniform treatment of mobile employee income and by ending the “throw out” rule, which are traditionally seen as discouraging investments and inconsistent with the idea of taxing the share of a company’s income reasonably associated with a state.
- West Virginia was only one of three states that had a throw out rule.
- Changes the apportionment of sales of services and intangible personal property to market sourcing instead of origin sourcing, which would make West Virginia’s treatment similar to treatment by the majority of jurisdictions.
- Eliminates the payroll and property factors and thus apportions income on only a single sales factor.

Summary

The purpose of this bill is to modernize the collection of income taxes by adopting uniform treatment of mobile employees. This bill contains a number of provisions related to income taxes. It starts by adding a provision to code with respect to taxation of mobile employees. It provides that a nonresident employee’s compensation for duties performed in West Virginia are excluded from West Virginia taxation if:

- The nonresident is present in West Virginia for less than 30 days during a tax year;
- The individual worked in more than one state;
- The person is paid as a professional athlete, entertainers, prominent individuals; and,
- If the state of residence of the nonresident taxpayer has a similar exclusion or has no personal income tax or the income is exempt by this state under the U.S. Constitution or federal law.

The bill also has provisions for a mechanism to calculate the manner an employer would determine whether or not to impose withholding of West Virginia taxes. The section would be effective July 1, 2021.

The second significant income tax implication is the single sales factor. This would modify the current formula for calculation of a means of determining a corporations business activity in West Virginia for purposes of taxation when a corporation has business income in two states. Currently the ratio of determining such activity is based on three factors: the value of property owned by the corporation in this state, the corporation’s payroll in the state, and the amount of sales. The change would reduce that to the sales.

The bill also eliminates the throw out rule. A throw out rule generally requires a taxpayer to throw out or exclude receipts from the sales factor that are attributable to a state where the taxpayer is not subject to tax. In the equation to determine taxation the numerator is the amount apportioned to the state and the denominator is the amount of total sales. When the throw out rule is applied, that amount is removed from the denominator. This has the effect of increasing in-state tax liability by including the

nontaxed receipts in the corporation's total business income for purposes of the sales factor. This would be effective January 1, 2022.

Throw out rules are traditionally seen as discouraging investments and are inconsistent with the idea of taxing the share of a company's income reasonably associated with a state. West Virginia is only one of three states that have a throw out rule. The other two are Maine and Louisiana.

Effective January 1, 2022, the allocation of sales would be determined to be in this state if:

- In the case of a sale of a service the service is delivered in this state; and
- In the case of intangible property, the property is rented, leased or licensed and used in this state.
- If there is a contract, government license, or similar intangible property that authorizes the holder to conduct business in a geographic area that includes part of West Virginia.
- Receipts from intangible property sales that are contingent on productivity, use, or disposition would be treated as sales receipts from the intangible property; and
- All other receipts from a sale of intangible property are excluded.

Effective Date: June 28, 2021

House Bill 2363, Relating to “Best Interests of the Child Protection Act of 2021”

Talking Points

- Updates several sections of the domestic relations code related to child custody.
- Provides additional considerations for the court to take into account in making its decisions, including the definition of “best interests of the child” updated to include contact with siblings.
- Clarifies the proper venue for initial child custody determinations between residents of different states, and for modifying custody orders entered outside of West Virginia.

Summary

This bill updates several sections of the domestic relations code related to child custody. In any decision related to allocation of child custody, whether temporary or permanent, a court is required to issue its orders in writing and provide specific findings of fact supporting its decision.

The bill also provides additional considerations for the court to take into account in making its decisions. In several cases, the court cannot rely on mere “caretaking” functions, and also must take into account demonstrated willingness or time spent performing “parenting” functions, which include financial support. The definition of “best interests of the child” is updated to include contact with siblings, including half-siblings. Objectives for determining custody now include reasonable telephone or electronic contact with a child, as well as a preference that time allocated to a parent results in time spent with that parent instead of a third party.

The venue statute is updated to clarify the proper venue(s) for initial child custody determinations between residents of different states, and for modifying custody orders entered outside of West Virginia. The bill also alters the process for actions involving relocation of a parent, replacing the notice-based process with a procedure for filing a petition prior to the parent’s expected relocation date. It further clarifies procedures for limited discovery regarding court-ordered investigations into allegations of abuse or neglect and the resulting hearing.

Finally, the bill expressly provides that any orders entered prior to the effective date of these amendments remain in full force and effect until modified by a court.

Effective Date: July 9, 2021

House Bill 2499, Tax reduction for arms and ammo manufacturing

Talking Points

- Provides tax relief for the manufacturing, sale, and use of firearms to attract manufacturing facilities to locate in West Virginia.
- Provides manufacturers of small arms, ammunition, ordinance, and accessories a special higher percentage credit rate on the Manufacturing Investment Tax Credit and creates a new tax credit for federal excise tax imposed on small arms and ammunition.
- Exempts sales of small arms and small arms ammunition from state sales and use taxes.

Summary

The purpose of this bill is to provide for tax relief for the manufacturing, sale, and use of firearms to attract manufacturing facilities to locate in West Virginia. The bill makes definition changes to facilitate the changes set out in the bill. The bill is broken into four (4) parts.

The first part of the bill will implement property tax relief for these types of manufacturers. Under W.Va. Code §11-6F-3, the value of “certified capital addition property” for purposes of property taxation is the property improvement’s salvage value which is five percent of the certified property’s original cost. Beginning on July 1, 2021, the property taxation will be the salvage value of the original cost in two instances:

- All real and personal property costs more than \$1 million and is constructed within two miles of an existing manufacturing facility which has an original cost of at least \$2 million and is owned by the same person or entity; or
- All real and personal property costs more than \$2 million and is constructed by a single entity or combination of entities engaged in a unitary business.

The second portion of the bill amends the formula for calculating the Manufacturing Investment Tax Credit. Manufacturers for small arms, ammunition, ordinance, and accessories will receive a special higher percentage credit rate. The increased amount is defined as 50 percent of the qualified manufacturing investment for eligible taxpayers against the corporate net income tax and the severance tax, if applicable. The current rate of other qualified manufacturers is 5 percent of the investment. This credit is taken over a 10-year period at 1/10 per year. The bill also removes obsolete language concerning the repealed business franchise tax.

The third part of the bill creates a new tax credit for federal excise tax imposed on small arms and ammunition. The section defines key terms.

Small arms and ammunition manufacturing facilities are eligible if a facility makes a qualified investment in a new or expanded manufacturing facility and if they are subject to taxes imposed by the personal income tax or the net corporate income tax.

Eligible taxpayers are allowed a credit against the portion of state taxes imposed that are the consequence of the taxpayer’s qualified investment in a new or expanded facility if the investment is at least \$2 million. The maximum amount of the allowable credit is 100 percent of amount of federal excise tax paid in a tax year under section 4181, Title 26 of the Internal Revenue Code. The allowable credit is to be taken over a 10-year period.

If any credit remains after the ten-year period, the amount is carried forward to each ensuing tax year until used or until after the 20th year when all remaining credit is forfeited.

This portion of the bill includes provisions concerning administration, enforcement, limitations, conditions, and qualifications. There are provisions for forfeiture should in any tax year the property ceases to be used in a manner that would evoke the tax relief or if operations cease entirely. The bill allows the credit to be transferred under certain circumstances. There are also record keeping requirements and a five-year report on the effectiveness of the credit to the Governor and the presiding officers of both houses. The credit is subject to West Virginia Tax Procedure and Administration Act and West Virginia Tax Crimes and Penalties Act. The Tax Commissioner is authorized to promulgate rules and the credit is effective for investments made on or after July 1, 2021.

Lastly, the fourth part of the bill exempts sales of small arms and small arms ammunition from state sales and use taxes. "Small arms" are defined as any portable firearm, designed to be carried and operated by a single person, such as rifles, pistols, shotguns, and revolvers, with a gun barrel internal diameter of .50 caliber or smaller or 10-gauge or smaller for shotguns. "Small arms ammunition" is defined as ammunition designed for use in these same portable firearms.

Effective Date: June 30, 2021

House Bill 2581, Providing for the valuation of natural resources property and an alternate method of appeal of proposed valuation of natural resources property

Talking Points

- Directs the Tax Department to promulgate rules for valuation of natural resources property for legislative approval, no later than July 1, 2021, concerning the valuation of property producing oil, natural gas, natural gas liquids, or any combination.
- Provides a methodology to determine fair market value and net proceeds.

Summary

This bill directs the Tax Department to promulgate rules for valuation of natural resources property for legislative approval, no later than July 1, 2021, concerning the valuation of property producing oil, natural gas, natural gas liquids, or any combination. It also directed the Tax Commissioner to promulgate emergency rules regarding valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof, fair market value shall be determined through the process of applying a yield capitalization model to the net proceeds. Net proceeds mean actual gross receipts on a sales volume basis determined from the actual price received by the taxpayers as reported on the taxpayer's returns, less royalties, and less actual annual operating costs as reported on the taxpayer's returns. The bill also adds definitions.

The bill 1) empowers the Office of Tax Appeals to hear property tax appeals, 2) lowers the standard of proof a taxpayer must meet to a preponderance of the evidence standard, 3) makes an appeal to the board of equalization and review optional and, 4) eliminates the board of assessment appeals.

Effective Date: April 10, 2021

House Bill 2694, Create the 2nd Amendment Preservation Act

Talking Points

- Creates the Second Amendment Preservation and Anti-Federal Commandeering Act.
- Prohibits federal commandeering of West Virginia law-enforcement for purposes of enforcement of federal firearms laws.
- Authorizes the Attorney General to challenge unconstitutional federal actions related to firearms.

Summary

The bill adds a new article creating the “West Virginia Second Amendment Preservation and Anti-Federal Commandeering Act.” The bill provides for:

- Prohibits federal commandeering of West Virginia law-enforcement for purposes of enforcement of federal firearms laws.
- Prohibits police agencies, departments, or officers from participating in the execution of a federal search warrant or arrest warrant when the only property sought to be taken and seized under the warrant is firearms, firearms accessories, or ammunition.
- Prohibits police agencies, departments, or officers from participating in the execution of a federal arrest warrant of a citizen of this state when the federal arrest warrant charges no crime other than the crime of the possession of firearms, firearm accessories, or ammunition.
- No police department, agency, or officer engaged in a traffic stop or in response to a noise complaint may arrest or detain a person for the violation of a new inconsistent federal firearms law or inconsistent presidential executive order or action.
- Prohibits any state court from depriving the right to possess firearms, firearm accessories, or ammunition under any red flag law.
- Identifies permitted activities for West Virginia law-enforcement agencies.
- Authorizes the Attorney General to challenge unconstitutional federal actions.
- Authorizes the Attorney General to publish model policies on or before January 1, 2022.
- Provides law-enforcement immunity from civil or criminal liability for failure to enforce a federal statute, executive order, agency order, rule, or regulation determined by the Attorney General of West Virginia to infringe upon Second Amendment rights.

Effective Date: July 9, 2021

House Bill 2895, Supplementing and amending the appropriations of public moneys to the Department of Veterans' Assistance

Talking Points

- Provides \$8.5 million for the construction of a veterans nursing home, which will be constructed in Beckley.

Summary

This supplemental appropriation appropriates \$8,500,000 from the unappropriated surplus in General Revenue to the Department of Veterans' Assistance and creates a new line of appropriation (Buildings – Surplus) within the department.

Effective Date: April 10, 2021

House Bill 2982, Relating to the Second Chances at Life Act of 2021

Talking Points

- Requires that information about the process of a chemical abortion and possibilities regarding effects be provided when a chemical abortion process is initiated and a second drug is contemplated to be used later.
- Provides physicians liability protections when acting in conformity with the law and when prescribing a non-FDA approved drug therapy to counteract a chemical abortion.

Summary

The bill defines terms by referencing other code sections. Abortion is defined by referencing W.Va. Code §16-2F-2 which means the use of any instrument, medicine, drug, or any other substance or device with intent to terminate the pregnancy of a female known to be pregnant and with intent to cause the expulsion of a fetus other than by live birth. This does not prevent prescription, sale, or transfer of IUD devices or other contraceptive devices, or other generally medically accepted contraceptive devices, instruments, medicines, or drugs for whom the drugs, contraceptive devices, instruments, medicines, or drugs were prescribed by a physician.

Attempt to perform an abortion means an act or an omission of a statutorily required act that under the circumstances as the person believes them to be, constitutes a substantial step in a course of conduct planned to culminate in the performance or induction of an abortion in this state in violation of the applicable provisions of this code. The bill applies to licensed medical professionals which means a person licensed under Chapter 30.

Chemical abortion is a new term, and it means the use or prescription of an abortion-inducing drug dispensed with the intent to cause an abortion. A medical emergency means a condition that based on reasonable medical judgment of the patient's physician, so complicates the medical condition of a pregnant female that it necessitates the immediate termination of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible physical impairment of a major bodily function, not including psychological or emotional conditions. No conditions shall be deemed a medical emergency if based on a claims or diagnosis that the female will engage in conduct which she intends to result in her death or in substantial harm and irreversible physical impairment of a major bodily function. Physician means a person with an unrestricted license to practice allopathic medicine pursuant to Chapter 30. Reasonable medical judgment means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and the treatment possibilities.

The bill adds additional information to the informed consent portion of the law. It requires if a chemical abortion involving the two-drug process of mifepristone is initiated and then a prostaglandin such as misoprostol is planned to be used later the female shall be informed that:

Some suggest that it may be possible to counteract the intended effect of a mifepristone chemical abortion by taking progesterone if the female changes her mind, before taking the second drug, but this process has not been approved by the Food and Drug Administration.

After the first drug involved in the two-drug process is dispensed in a mifepristone chemical abortion, the physician shall provide written medical discharge instructions to the pregnant female which shall include the statement:

“If you change your mind and decide to try to counteract the intended effects of a mifepristone chemical abortion, if the second pill has not been taken, please consult your physician.

- (i) You might experience a complete abortion without ever taking misoprostol;*
- (ii) You might experience a missed abortion, which means the fetus is no longer viable, but the fetus did not leave your body; or*
- (iii) It is possible that your pregnancy may continue; and*
- (iv) You should consult with your physician.”*

The bill requires the female shall certify, as part of the informed consent process, that she has been informed of these possibilities.

The bill contains waiver of liability language for a physician complying with the informed consent provisions of this section and prescribing a non-FDA approved drug to counteract a chemical abortion.

The bill requires the Secretary of DHHR to print materials designed to inform the female of the range of possibilities regarding the effects and risks of a mifepristone chemical abortion or an attempt to counteract it.

Effective Date: July 9, 2021

House Bill 3293, Relating to single-sex participation in interscholastic athletic events

Talking Points

- Requires public secondary schools and public higher education schools to designate athletic teams according to biological sex.
- Prohibits biological males from competing on teams designated for biological females.
- Provides a cause of action for students aggrieved and harmed by a violation of the law.

Summary

This bill requires all public secondary schools and public schools of higher education to designate teams according to biological sex, using the “male, men, or boys,” “female, women, or girls,” and “coed” classifications. It includes legislative findings regarding the state’s important government interest in ensuring equal athletic opportunity for biological females. It provides definitions for “biological sex,” “female,” and “male”. It prohibits biological males from competing on teams designated for biological females where selection for such team is based upon competitive skill or the activity involved is a contact sport. It provides a cause of action for students aggrieved and harmed by a violation of this section and protecting identity of minor students involved in such action. It requires the promulgation of legislative rules, including emergency rules.

Effective Date: April 9, 2021

House Joint Resolution 2, Providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate

Talking Points

- A proposed constitutional amendment that, if passed by the voters, would provide that the courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate.
- Will be placed on the ballot during the general election in November 2022.

Summary

The purpose of this resolution is to place on the 2022 general election ballot a proposed constitutional amendment. The resolution would give the voters the option to adopt a constitution amendment to the West Virginia Constitution providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate.

Election Date: November 2022 General Election

House Joint Resolution 3, Property Tax Modernization Amendment

Talking Points

- A proposed constitutional amendment that, if passed by the voters, would allow the legislature to lower the personal property tax on motor vehicles, inventory used in business activity, and equipment and machinery.
- Will be placed on the ballot during the general election in November 2022.

Summary

The purpose of this resolution is to place on the 2022 general election ballot a proposed constitutional amendment. If passed, the amendment would allow the legislature to exempt by law tangible machinery and equipment personal property directly used in business activity, tangible inventory personal property directly used in business activity and motor vehicles. This language is added to the list of other property which the legislature may exempt.

Election Date: November 2022 General Election